

University of San Francisco and University of San Francisco Faculty Association, Petitioner. Case 20-RC-15479

December 16, 1982

DECISION AND DIRECTION OF ELECTIONS

BY MEMBERS FANNING, JENKINS,
ZIMMERMAN, AND HUNTER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on March 23, 24, 25, 29, and 30, 1982, before Hearing Officer Kay M. Hendren. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 20 transferred this case to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs with the Board.¹

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The Employer was stipulated by the parties to be engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. University of San Francisco Faculty Association is a labor organization within the meaning of the Act.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Employer is a private, nonprofit university with a main campus in San Francisco, California, and offices and classes located throughout California. The Petitioner seeks to represent a unit of all part-time instructional faculty in the colleges of liberal arts, science, business, and professional studies and the schools of education and nursing,

and all part-time academically closely related employees, employed by the Employer at locations throughout the State of California. The Employer contends that no unit of part-time faculty is appropriate and, in the alternative, if it is found that a unit of part-time faculty can be appropriate, that the part-time faculty teaching in the college of professional studies should be represented in a unit separate from the part-time faculty at the other colleges of the University.

The Board has not previously had occasion to decide whether a unit of part-time faculty can be appropriate. In *University of New Haven, Inc.*, 190 NLRB 478 (1971), the Board found that a combined unit of full- and part-time faculty was appropriate. In *New York University*, 205 NLRB 4 (1973), however, the Board overruled *University of New Haven* and found that such a combined unit was inappropriate because part-time faculty did not share a sufficient community of interest with full-time faculty in light of their different functions, compensation, participation in university government, eligibility for tenure, and working conditions. The issue of whether the part-time faculty could separately form an appropriate unit was expressly reserved.² Subsequently, in *Goddard College*, 216 NLRB 457 (1975), a petitioner sought to represent a combined unit of full- and part-time faculty members, or, in the alternative, separate units of full- and part-time faculty. The Board found a full-time unit appropriate after excluding faculty in several programs. The Board rejected the petitioner's request to represent part-time faculty in these excluded programs, however, finding that with the exception of their part-time status these employees had little in common, having different wages, hours, responsibilities, locations, and conditions of employment. Thus, the initial issue to be resolved here is whether a unit of part-time faculty members is appropriate.

The University is composed of colleges of liberal arts, science, business, and professional studies and schools of education and nursing. The colleges of liberal arts and science are organized into five divisions, each of which is overseen by an associate dean who reports to Dean Harnett.³ Each of the five divisions employs several part-time faculty, designated by the Employer as "lecturers," all of whom are employed pursuant to a standard Uni-

¹ Subsequent to the close of the hearing, on August 19, 1982, the Petitioner moved to reopen the record for the limited purpose of introducing an additional written exhibit. The Employer opposed the motion. The exhibit in question is an arbitrator's decision, dated February 15, 1980, involving certain full-time faculty members at the University who are represented by the Petitioner. We find that the Petitioner has failed to demonstrate that the document was either newly discovered or previously unavailable, and, pursuant to Sec. 102.65(e)(1) of the Board's Rules and Regulations, as amended, the Petitioner's motion is hereby denied. Moreover, we note that the proffered document is only marginally relevant to the issues presented herein, and would have no effect on our decision were we to consider it.

² 205 NLRB at fn. 12.

³ At the time of the hearing, the college of liberal arts and the college of science, although administered jointly, retained separate identities. A proposal then pending before the Employer's board of trustees provided for the merger of the two colleges into a single college of liberal arts and science. Neither party contended that such a merger, if effectuated, would have any material effect on the issues presented to the Board herein.

versity memorandum of employment. In addition to the 5 divisions, which together employ approximately 83 part-time lecturers, there are part-time lecturers employed by each of several special programs administered as part of the colleges of liberal arts and science, including the St. Ignatius Institute, which offers an integrated Catholic liberal arts curriculum, the expository writing program, the religious education program, the summer theology program, the World English Center, and the bachelor of fine arts program.

The school of education employs approximately 10 part-time lecturers at its main campus in San Francisco and approximately 31 additional part-time lecturers at 11 different locations throughout the State. The parties stipulated that these employees should be included in any unit found appropriate.

The school of nursing employs two categories of part-time employees. Three part-time lecturers teach in the classroom, and approximately 27 part-time clinical teaching assistants (CTAs) instruct nursing students in a clinical setting at various hospitals and clinics in the metropolitan San Francisco area. Both categories of part-time nursing employees receive the standard University memorandum of employment.

The college of business typically employs 15-20 part-time lecturers. Applicants for these positions are interviewed by the associate dean, and those employed are hired pursuant to the standard University memorandum of employment and paid according to the universitywide salary schedule promulgated by the vice president for academic affairs, Father Angilella. They teach on the main campus in San Francisco.

The Employer also operates a college of professional studies (CPS) which was previously known as the division of continuing education. This program is designed to provide educational services for working adults who have not completed the requirements for their bachelor's degrees. The program offered by CPS is markedly unlike that of any of the other colleges or schools of the University. Rather than following the University's semester schedule, it operates on a year-round basis at varying locations throughout the State. Neither the course schedules nor the classroom locations are fixed in the manner of other University offerings. The college begins a course when approximately 16 students in a given location are ready to enroll and a faculty member is available to teach, regardless of the time of year. Each course is structured in sequential units and ordinarily requires slightly more than a year to complete. Classes are offered in over 100 locations around the State, but these lo-

cations are arranged individually. There are no established classrooms in which courses are taught but, instead, each course is taught in a location arranged for it specifically. Typical locations include rooms made available by private corporations, churches, community centers, and public schools.

Individuals interested in teaching in CPS are invited to a screening workshop which affords the applicants an opportunity to become familiar with the concept and format of CPS and simultaneously allows administrative staff to observe each applicant's interaction with others. Upon completion of the workshop, preferred applicants are invited to continue the application procedure. The dean of CPS then submits written evaluations of these applicants and recommendations regarding hiring to the academic vice president, who makes the formal appointment to what is designated "adjunct faculty" status. This process is unique to CPS; there is no comparable evaluation and appointment system at the University's other schools and colleges. Additionally, once appointed, CPS faculty are considered part of an adjunct faculty pool, from which the University expects to select instructors for future assignments. The CPS faculty members are paid on a different pay scale from part-time lecturers elsewhere at the University, and they have their own faculty meetings and do not attend faculty meetings attended by the non-CPS part-time faculty. CPS courses are designed and their curricula prepared in detailed outline form by the directors of the program and by curriculum writers hired by the University, whereas other part-time faculty are not bound to follow a precisely predetermined curriculum in teaching their courses, and have substantially more flexibility to determine the content and methods of their courses. Unlike other part-time faculty, CPS instructors are subject to a formal evaluation procedure involving site visits and written evaluations which become part of their permanent records. There is virtually no interchange of part-time faculty between CPS and the other schools and colleges of the University.

The Employer contends that no unit of part-time faculty can be appropriate because all such employees are hired on an as-needed basis when there is a requirement for special expertise or in emergencies when a full-time faculty member becomes ill or suddenly takes a leave of absence. The Employer further contends that part-time faculty cannot have a reasonable expectation of future employment, since the standard University memorandum of employment for non-CPS faculty includes a clause which provides:

The appointment is for a set term. It does not imply or establish a claim of priority for a subsequent appointment of any kind, or for any future tenured status.

Thus, the Employer urges³ that all part-time employment at the University is "essentially temporary in nature," and no appropriate unit may be found.

We find neither of the Employer's arguments persuasive. The hiring of employees on the basis of their special expertise is not indicative of temporary status. Presumably, many full-time faculty members are also hired on the basis of their expertise. In any event, a finding of temporary status turns on evidence that the employee has been hired for only a short period, and has no reasonable expectation of being rehired. Under such circumstances the temporary employees lack a community of interest with the rest of the work force. Being hired on the basis of special expertise may be *consistent* with temporary status, but clearly does not establish it. Further, there is no evidence to support a finding that here any substantial number of the part-time lecturers are hired in emergency situations created by illnesses or unexpected leaves of absence. In fact, the record does not disclose which, if any, of the part-time faculty members were hired in such circumstances. The sheer numbers involved render implausible the Employer's suggestion that the part-time lecturers are hired to fill emergency vacancies: approximately 250 part-time lecturers and 120 CPS adjunct faculty were teaching at the time of the hearing. In addition, we note that part-time lecturers are not restricted from applying for reappointment, and there is no evidence that they are told, when hired, that the position which each is filling is a temporary one which will not exist in subsequent semesters. Instead, their contracts merely make clear that the appointment to a teaching position in one year does not establish a *right* to reappointment in successive years. Such a disclaimer of "tenure" does not, without more, demonstrate temporary status. The key question which remains unanswered is whether, apart from the fact that the Employer is not obligated to reappoint such employees, it, in fact, does so. The Employer made no effort to prove that part-time lecturers are not, in fact, offered reappointment. On this record, therefore, there is no showing that the part-time faculty are temporary employees.

Further, we find that the part-time lecturers share a substantial community of interest. Thus, the instant case is unlike *Goddard College, supra*, in which the Board found that the employees lacked a community of interest because they had insufficient commonality of wages, hours, responsibilities, loca-

tions, and conditions of employment. The part-time lecturers here have in common the method by which they are hired and compensated, including a standard University memorandum of employment which sets forth terms and conditions of employment, as well as their freedom to design their own curriculum and teaching methods within the parameters of a given course description. The great majority of them work in close proximity to one another at the Employer's main campus in San Francisco, and thus have the opportunity for contact with other unit members. They work similar hours, and are subject to the same administrative structure. Accordingly, we conclude that the part-time lecturers constitute a unit appropriate for collective bargaining.

The Employer argues in the alternative that, if we reject its contention that all part-time faculty are temporary employees and thus ineligible for inclusion in a unit, the CPS faculty should be in a unit separate from that of the part-time lecturers. We find merit in this contention. The CPS faculty do not share a sufficient community of interest with the part-time lecturers to warrant their inclusion in a single unit. The methods by which they are interviewed, hired, evaluated, and compensated are unlike those pertaining to part-time lecturers. They sign a different form of contract and their responsibility to follow a prescribed curriculum is unique. They meet in faculty meetings which are exclusively their own, and they do not attend meetings of the non-CPS faculty. There is virtually no interchange or contact between the part-time faculty members of CPS and those of the other schools and colleges, and the CPS faculty reports to a separate administrative hierarchy. In these circumstances, we will not include the CPS adjunct faculty in the unit of part-time lecturers discussed above.

We further find, however, that each of the factors just discussed, while distinguishing the CPS faculty from the part-time lecturers, also establishes that CPS faculty have a clear community of interest among themselves. Accordingly, as the Petitioner indicated at the hearing its willingness to represent the CPS faculty in a separate unit, we shall direct elections in two units.⁴

The parties were in disagreement as to the inclusion of several job classifications in the unit of non-CPS part-time faculty. We turn now to a resolution of these issues.

As noted above, the school of nursing employs clinical teaching assistants (CTAs) who work with

⁴ We leave to the Regional Director the administrative determination of whether the Petitioner has a sufficient showing of interest to proceed to an election in each of the two units we find appropriate.

nursing students at various cooperating hospitals and clinics. The Employer contends that the CTAs should be excluded on the grounds that their employment is temporary and they have no reasonable expectation of continued employment. CTAs, like other part-time employees, receive contracts which are expressly limited in duration to either one semester or one academic year. To this extent, their status is comparable to the other part-time employees. With respect to the CTAs, however, the Employer offered certain specific evidence of the type which we have noted was not presented concerning the part-time faculty generally. Thus, the record shows that at the time of the hearing 27 CTAs were employed by the Employer, 5 of whom had taught in previous years. Of those five, however, at least one had taught for 3 years and two others had taught for at least 2 years. In addition, one CTA not teaching at the time of the hearing had taught the previous 2 years, taken a year off in 1981-82, and may return. From these facts and from a reading of the job description for CTAs which was placed in evidence, it is clear that the Employer has no policy of refusing to reappoint CTAs so as to limit systematically their employment to a single year. While CTAs may choose to seek other employment following a year with the Employer rather than seek reappointment, this does not render them temporary employees, or destroy their community of interest with the other part-time employees. Accordingly, we shall include CTAs in the unit.

The Employer, contrary to the Petitioner, contends that certain part-time faculty members who write CPS curricula should be excluded on the ground that they are managerial employees under the guidelines set forth by the Supreme Court in *N.L.R.B. v. Yeshiva University*, 444 U.S. 672 (1980). The only part-time faculty member to testify in this regard, Roger Burbridge, stated the he formerly had been a full-time faculty member and currently held a part-time faculty position. At the time of the hearing, he also had a part-time contract to revise substantially the curricula in four CPS courses. His proposed revisions were to be submitted to the assistant director of the relevant CPS division for review and approval. His duties in this part-time capacity did not include making recommendations concerning such matters as admission, retention, or graduation policies, matriculation standards, tuition, the size of the student body, teaching loads, the locations of any of the CPS classes, faculty evaluations, promotions, or tenure, hiring, discharges, grievances, salaries, or budget matters. Thus, his only authority (and, so far as the record shows, the

only area in which any other curriculum writer has authority) was to submit curricula for approval. Moreover, even this narrow authority appears to be of a substantially different character from that contemplated by the Court in *Yeshiva*, where, through a collegial decisionmaking process, the faculty substantially and pervasively operated the school. The curriculum writers also may teach classes part time, but do so pursuant to a separate contract. Thus, rather than deriving any authority with respect to the "management" of the school from their status as faculty, they are hired essentially as consultants to perform a specific task. We find that they are not managerial employees, and they will be included in the CPS unit.

The parties also disagreed as to the inclusion in the unit of the part-time librarian and the director of the university radio station, KUSF. The record reveals little about the part-time librarian's duties or terms and conditions of employment. The director of KUSF serves both in that capacity and as a part-time instructor. In connection with his work at the radio station he appears to have authority to hire and fire employees, but the Petitioner urges that he should be included on the basis of his part-time instructional role. We find that the record is inadequate to permit a determination as to the eligibility of either the part-time librarian or the director of KUSF, and we shall accordingly permit both to vote subject to challenge.⁵

We find that the following constitute units appropriate for purposes of collective bargaining within the meaning of Section 9(c) of the Act:

All part-time faculty members in the colleges of liberal arts, science, and business, and the schools of education and nursing, including clinical teaching assistants and all part-time academically closely related employees, at locations throughout the State of California, excluding all full-time employees, College of Law employees and all other employees, guards and supervisors as defined in the Act.

All part-time faculty members in the college of professional studies at locations throughout the State of California, excluding all full-time employees, guards and supervisors as defined in the Act.

[Direction of Elections and *Excelsior* footnote omitted from publication.]

⁵ The parties agreed, and we find, that no part-time faculty members should be included in a bargaining unit solely on the basis of employment in summer session or intersession.